

1 target.

2 THE WITNESS: You know, I'm a lawyer, Your Honor.
3 I can't necessarily --

4 THE COURT: You're a partner.

5 THE WITNESS: I'm a partner.

6 THE COURT: That's more important here today.

7 THE WITNESS: In Reading the answer is yes. I
8 can't tell you in any place.

9 THE COURT: In Boston it might not have been that
10 important.

11 THE WITNESS: Boston has so many problems that I
12 don't know what -- I can't even answer the question. I just
13 don't know.

14 Wayne is heavily involved with Hispanic
15 organizations and so on, and I would say all things being
16 equal Wayne would be interested in seeing Hispanic
17 programming.

18 THE COURT: If the interest was that keen in
19 Monroe, in Video 44, and you had one station, why didn't
20 -- I know you gave an answer to this, and I'm sorry if I'm
21 making you repeat something, but why didn't you hang in
22 there? You've got a group that's obviously a group that's
23 very tough in terms of business advice. Why not hang in
24 there and develop your own Spanish programming?

25 THE WITNESS: Your Honor, to develop programming

1 is -- We put in a lot of time --

2 THE COURT: You're a strong group.

3 THE WITNESS: Your Honor, nobody, no group of
4 individuals has the capacity to develop programming on their
5 own. We --

6 THE COURT: Obviously you're going to have to go
7 out and you're going to have to get consultants and experts
8 and --

9 THE WITNESS: I know.

10 THE COURT: I'm just saying that you as a group
11 could personally sit down and do it.

12 THE WITNESS: It's much more than that. We went
13 down to Miami which is where the American -- American
14 programming originates primarily in Miami, but also in
15 Mexico. And we were talking about being in the movie
16 industry for all practical purposes. You're talking huge
17 dollars as to what is involved in producing Hispanic
18 programming. And not only that -- This group has money, but
19 it doesn't have the kind of money it takes to do --
20 Programming is a whole different thing. It's much more --

21 THE COURT: But you could attract -- I mean you
22 could attract -- again, what you have is you have a nucleus
23 of people who are obviously high powered people who know how
24 to get things done.

25 THE WITNESS: At that time there were two

1 television networks in the country. Univision and
2 Telemundo. It appeared to us, including Fickinger, that
3 evidently there was only room for one network.

4 THE COURT: You thought you were boxed out, in
5 effect?

6 THE WITNESS: Yeah. I've got to tell you, Mr.
7 Steinberg and the people that were behind Telemundo made us
8 look like paupers and they couldn't make it go.

9 Putting aside the --

10 THE COURT: Supposing that you stayed with Video
11 44 and you realized that you weren't going to be making, you
12 couldn't bring in for the reasons that you're stating, the
13 Spanish programming that Mr. Fickinger wanted. Wasn't there
14 any fallback position?

15 THE WITNESS: We really didn't have one. We were
16 going to go Spanish.

17 THE COURT: Or nothing. It was Spanish or
18 nothing?

19 THE WITNESS: Yeah, we were totally motivated to
20 go Spanish, yeah. We had a lot of interest in terms of
21 Hispanic --

22 THE COURT: Was there no such thing as a fallback?
23 Most businessmen have fallbacks.

24 THE WITNESS: Your Honor, in hindsight I can tell
25 you we should have, in terms of pure economics we should

1 have done that. But we were totally focused --

2 THE COURT: -- public interest. The economics is
3 one thing, but the public interest --

4 THE WITNESS: We were totally focused on Hispanic
5 broadcasting. I mean we were monolithic in a sense. All we
6 ever talked about was Hispanic broadcasting. If we were
7 smarter businessmen or something we would have stuck in and
8 gone to a different kind of programming because there were
9 other kinds of programs available. We were really --
10 Velasquez was a large shareholder who walked away from it.

11 THE COURT: But \$17 million is also hard to walk
12 away from.

13 THE WITNESS: Well we didn't know we were going to
14 give \$17 million.

15 THE COURT: You could have walked away from it.
16 You had the station.

17 THE WITNESS: Yeah, but we didn't have the
18 programming.

19 THE COURT: But you had the station.

20 THE WITNESS: We had the station.

21 THE COURT: And you weren't going to walk away
22 from \$17 million.

23 THE WITNESS: We had the station, we needed a lot
24 more money, Your Honor. The station was worth a lot more
25 money than \$17 million. We were --

1 THE COURT: How much -- In '92.

2 THE WITNESS: In excess of \$50 million.

3 THE COURT: Really?

4 THE WITNESS: Yeah.

5 THE COURT: That was --

6 THE WITNESS: -- more than that.

7 THE COURT: I mean at that time, marketed --

8 THE WITNESS: Yeah, the Chicago market, Your

9 Honor. They were on top of Hancock, we had a fight, we had
10 a lease deal on top of Hancock? From Hancock you get to
11 Milwaukee, Your Honor. We were really, in retrospect it's
12 kind of funny, but we were really focused on doing Hispanic
13 programming.

14 THE COURT: Let me just, I guess I have one other
15 point I wanted to bring up with you.

16 You want to establish the principal as you've
17 articulated it with respect to home shopping as being unable
18 to, physically unable to deliver public service programming
19 adequately.

20 THE WITNESS: And be financially viable.

21 THE COURT: And be financially -- Yeah, you have
22 to be to make anything work in this world. But other than
23 that, why do you care about the quality of PSAs in Reading?

24 THE WITNESS: We care about the quality of PSAs in
25 general.

1 THE COURT: In general. Yeah, you do in general,
2 but --

3 THE WITNESS: Not the PSAs. I think PSAs --

4 THE COURT: Well, I'm sorry. I said that wrong.
5 I mean public service type broadcasting --

6 THE WITNESS: Right.

7 THE COURT: -- in Reading? I mean you don't
8 really have an interest in that as much as you have an
9 interest in public broadcasting service, broadcasting in
10 general.

11 THE WITNESS: Right.

12 THE COURT: That may explain why you don't have
13 anybody from Reading in your group.

14 THE WITNESS: Yeah, --

15 THE COURT: You don't really care what --

16 THE WITNESS: Your Honor, --

17 THE COURT: I'm not talking about being oblivious,
18 unconcerned about it. But the focus of -- You've got a
19 venture here that's kind of going out there like crusaders.

20 THE WITNESS: That's what we are.

21 THE COURT: And you're not going to be really that
22 much concerned about public service broadcasting in one
23 village. You want that public service broadcasting standard
24 nationwide.

25 THE WITNESS: Right. Now let me give you --

1 THE COURT: You've answered my questions.

2 I'm going to let Mr. Cole take you through this
3 any way he wants to. I'm not going to cut you off, but it's
4 ten to 5:00 and --

5 THE WITNESS: I have a feeling my airplane is
6 going away.

7 THE COURT: You've got an airplane to catch?

8 THE WITNESS: Your Honor, there are a lot of
9 airplanes to Chicago. And I'm interested --

10 THE COURT: All right. I want to ask you, do you
11 have anything very specific to ask this witness in terms of
12 what I've asked? And it has to be very specific and it has
13 to be unhesitant.

14 (Laughter)

15 MR. HUTTON: I'm sorry, Your Honor.

16 THE COURT: I'm sorry, too, but it's getting late.

17 FURTHER RECROSS-EXAMINATION

18 BY MR. HUTTON:

19 Q Did Adams or any member of the Adams group
20 participate in the FCC rulemaking on whether home shopping
21 stations serve the public interest?

22 A No.

23 MR. HUTTON: That's it.

24 THE COURT: On Redirect, do you want a few minutes
25 to get ready?

1 MR. COLE: No, Your Honor.

2 THE COURT: You're all set to go?

3 MR. COLE: Yes, Your Honor.

4 THE COURT: Okay.

5 MR. COLE: Your Honor, I think I can safely say
6 that I have two questions.

7 THE COURT: Sub parts?

8 MR. COLE: No sub parts.

9 REDIRECT EXAMINATION

10 BY MR. COLE:

11 Q Mr. Gilbert, do you recall during Cross-
12 Examination by Mr. Hutton and also some examination by Judge
13 Sippel, there was a good deal of conversation about a taping
14 project which you had undertaken with respect to the
15 programming which you believed that to be of WTVE, do you
16 recall that?

17 A Yes.

18 MR. COLE: I apologize, Your Honor. There will be
19 sub parts.

20 BY MR. COLE:

21 Q And you indicated as I recall, and correct me if
22 I'm wrong, that in that, in connection with that project you
23 reviewed tapes which were sent to you, is that correct?

24 A Yes.

25 Q Did you review those tapes in real time or in some

1 other mode?

2 A In fast forward.

3 Q So you didn't sit there and watch hour for hour
4 all the tapes.

5 A I watched all the tapes and all the transmissions,
6 but I -- I learned how to -- Particularly, I didn't
7 articulate or realize until I heard the -- There was a way
8 we knew that the PSA was coming. I'll just qualify or
9 articulate. There was this music that would come in front
10 of the PSA. That's how we stopped the fast forward.

11 MR. COLE: And Your Honor, this is not a question
12 but I think you clarified it on --

13 THE WITNESS: I did some fast forward, some real
14 time. Just to get the flavor of the sales pitch.

15 MR. COLE: Your Honor, I had a note that I should
16 clear the record upon who Irving Harris was because his name
17 came up, but I believe you cleared it up that Mr. Harris was
18 a principal of Video 44 which was the incumbent in the
19 Chicago proceeding, the Monroe proceeding. I'm not trying
20 to testify, I'm just trying to state that for the record so
21 it will be clear.

22 THE COURT: That's a neutral fact.

23 BY MR. COLE:

24 Q And finally, Mr. Gilbert, in response to a
25 question by Mr. Hutton or a couple of questions by Mr.

1 Hutton, I believe you stated that during none of your visits
2 to Reading did you watch Station WTVE. Do you recall that
3 testimony?

4 A Yes.

5 Q Can you state why you did not watch station WTVE
6 during your visits?

7 A Nobody I asked to show it to me had it on their
8 set.

9 Q Thank you. I have nothing further.

10 THE COURT: That's it?

11 Okay. That's it. There are no further questions
12 for you, Mr. Gilbert.

13 It's almost 5:00 o'clock, in the afternoon and
14 you've been on all afternoon.

15 I just want to let, I want to do two things. You
16 can leave if you want to.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: First, I want to let you know, I don't
19 want to lull anybody into any complacency here, but I'm
20 listening to this testimony very, very carefully in light of
21 the fact that I still have under consideration this motion
22 to add the issue on the abuse of process. I'm giving it
23 very, very -- I'm giving it very serious thought.

24 I think I've learned something today.

25 The other thing I want to do before we close the

1 record is I want to read into the record the rule in support
2 of my ruling denying the discovery of the tapes, the
3 videotapes at this time that the Adams expert has used --
4 Not the expert. I'm sorry, what's the man's name?

5 MR. COLE: Mr. Boothe.

6 THE COURT: Yeah. Mr. Boothe used in connection
7 with preparing his exhibit.

8 MR. COLE: Your Honor, just to correct you, Mr.
9 Boothe did not use any videotapes.

10 THE COURT: Well what videotapes was Mr. Hutton
11 asking about?

12 MR. COLE: I have no clue. Oh, the videotapes Mr.
13 Hutton was asking for of us? I believe it was the
14 videotapes that were prepared by Mr. Gilbert's instance or
15 request by the college students --

16 THE COURT: Oh, I take that back. The videotapes
17 that Mr. Hutton had that he wanted to put on in connection
18 with Mr. Boothe --

19 MR. COLE: Correct. Which are, again, not tapes
20 Mr. Boothe has used or not tapes --

21 THE COURT: I stand corrected. That's absolutely
22 right. Mr. Hutton has the tapes and he wants to use them in
23 the manner that he explained.

24 There is -- I want to get to the point here.
25 Under Rule 1.357 of the Commission's rules, the Rules of

1 Practice, it says "Unless offered for the sole purpose of
2 intending to prove or demonstrate sound effects and
3 mechanical or physical reproduction of sound waves, a
4 mechanical reproduction shall not be admitted in evidence.
5 Any party desiring to offer any matter alleged to be
6 contained therein shall have such matters typewritten on
7 paper of the size described by section" such and such, "and
8 the same shall be identified and offered in duplicate, and
9 in the same manner as other exhibits."

10 I know you didn't intend to use it as an exhibit
11 per se, but in the context in which you described how it
12 probably would get to be used, it certainly would get to the
13 point where it would have to be looked upon as being put
14 into the record as some form of evidence.

15 With respect to the videotapes that were prepared
16 for the Adams group of the home shopping programming, as of
17 right now that evidence would not be relevant to this case.
18 However, it would be relevant to an added issue if an added
19 issue were added.

20 So right now it's not a relevant discovery
21 request, in addition to it being I think really exceedingly
22 late in the game.

23 MR. HUTTON: That's why I think I didn't file the
24 request for it, Your Honor.

25 THE COURT: Whatever. Those are my rulings. I

1 just want to be clear as to why ruling the way I'm ruling.

2 MR. HUTTON: I appreciate that.

3 THE COURT: It's almost 5:00 o'clock and
4 everybody's worked very hard today, so we're in recess,
5 including the Reporter, we're in recess until 9:30 tomorrow
6 morning.

7 You will have Mr. Boothe here?

8 MR. COLE: Mr. Boothe will be available, and I
9 think we're going to try to do Mr. Kase first thing
10 tomorrow?

11 MR. SIFERS: Mr. Kase is supposed to call at 9:30
12 in the morning.

13 THE COURT: This is supposed to be hooked up and
14 ready to go. It should be. We tested it so we should be
15 okay. We got a speakerphone here.

16 How long do you think that will take?

17 MR. COLE: It's Mr. Bechtel's call, but my
18 recollection was he was talking in terms of no more than an
19 hour I think.

20 THE COURT: That's what I heard too. Then we will
21 go with Mr. Boothe.

22 MR. COLE: I'll have Mr. Boothe here before Mr.
23 Kase is and he can sit in the witness room or he can listen
24 to Mr. Kase. I don't think there's going to be any
25 problem --

1 THE COURT: He can sit in the courtroom.

2 Do you have any objection to that?

3 MR. HUTTON: No.

4 THE COURT: All right, then we'll start at 9:30
5 tomorrow morning.

6 We're in recess. Thank you.

7 (Whereupon, at 4:59 p.m., the hearing was
8 recessed, to reconvene at 9:30 a.m., on Thursday, January
9 13, 2000.)

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REPORTER'S CERTIFICATE

FCC DOCKET NO.: 99-153

CASE TITLE: In Re: Reading Broadcasting

HEARING DATE: January 12, 2000

LOCATION: Washington, DC

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 1-12-00

Sharon Bellamy
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I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: 1-21-00

Marcia Thurman
Marcia Thurman
Official Transcriber
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PROOFREADER'S CERTIFICATE

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 1-27-00

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